

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

DEMETRIUS BAILEY, CP-7819,)	
Petitioner,)	
)	
v.)	3:14-cv-121
)	
KENNETH CAMERON,)	
Respondent.)	

MEMORANDUM

Mitchell, M.J.:

Demetrius Bailey, an inmate at the State Correctional Institution at Houtzdale has presented a petition for a writ of habeas corpus. In his petition, Bailey seeks to challenge his December 20, 1994 sentence imposed in the Court of Common Pleas of Allegheny County at Nos. CC199406409 and CC. 199408102.

However, this is not Bailey's first federal petition challenging his conviction. Civil Action 01-5 was dismissed as untimely on September 13, 2001 and on October 7, 2002, the United States Court of Appeals for the Third Circuit denied a certificate of appealability and certiorari was denied on April 7, 2003. A subsequent Rule 60(b) motion was filed and denied and on March 22, 2005 the Court of Appeals again denied a certificate of appealability. Bailey again filed a Rule 60(b) motion which was denied and a certificate of appealability was denied on February 6, 2008. On October 7, 2008, the Court of Appeals denied his petition as a successive petition. Civil Action No. 2:13-cv-653 was transferred to the Court of Appeals for consideration as a successive petition and on June 25, 2013, the petition was deemed successive by the Court of Appeals. Not satisfied, on September 17, 2013, Bailey submitted another habeas petition to this Court which was docketed at 2:13-cv- 1362. On October 8, 2013, that petition was transferred to the Court of Appeals for consideration as a successive petition and is presently pending in that Court.

The Antiterrorism and Effective Death Penalty Act, signed into law on April 24, 1996, included several major reforms to the federal habeas corpus laws. As part of this habeas corpus

reform, Congress amended 28 U.S.C. § 2244 to prohibit district courts from entertaining claims presented in a second or successive habeas corpus application unless the appropriate federal court of appeals authorizes such filing. The relevant amended language provides as follows:

(A) Before a second or successive application permitted by this section is filed in the district court, the applicant shall move in the appropriate court of appeals for an order authorizing the district court to consider the application.

(B) A motion in the court of appeals for an order authorizing the district court to consider a second or successive application shall be determined by a three-judge panel of the court of appeals.

(C) The court of appeals may authorize the filing of a second or successive application only if it determines that the application makes a prima facie showing that the application satisfies the requirements of this subsection.

(D) The court of appeals shall grant or deny the authorization to file a second or successive application not later than 30 days after the filing of the motion.

(E) The grant or denial of an authorization by a court of appeals to file a second or successive application shall not be appealable and shall not be the subject of a petition for rehearing or for a writ of certiorari.

28 U.S.C. § 2244(b)(3).

Because the instant petition was improperly filed in this court as opposed to the Court of Appeals as required by 28 U.S.C. 2244(b)(3)(A), this Court lacks jurisdiction over it without the authorization of the Court of Appeals, and it will be transferred to the United States Court of Appeals for the Third Circuit pursuant to 28 U.S.C. 1631 for consideration as a successive petition.

An appropriate Order shall be entered.

ORDER

AND NOW, this 16th day of June, 2014, for the reasons set forth in the foregoing Memorandum, the petition of Demetrius Bailey for a writ of habeas corpus is transferred forthwith to the United States Court of Appeals for the Third Circuit pursuant to 28 U.S.C. §1631 for consideration as a successive petition.

s/ Robert C. Mitchell
United States Magistrate Judge